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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/097,023 06/12/98 MCFADDEN J 290252021800

QM22/0509

EXAMINER

MORRIS & FOERSTER
755 PAGE MILL ROAD
PALO ALTO CA 94304

THOMPSON, M

ART UNIT

PAPER NUMBER

3763

DATE MAILED:

05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/097,023	MCFADDEN ET AL.
Examiner	Art Unit	
Michael M. Thompson	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 February 2001 .

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15, 17-22, 24-42, 44-48 and 50-60 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-15, 17-22, 24-42, 44-48 and 50-60 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____
16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 20) Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I. in Paper No. 13 is acknowledged. The traversal is on the ground(s) that the catheter of claim 31 must include a lumen. This is found persuasive because the Applicant is claiming a catheter and catheters have a central lumen. The requirement is therefore obviated and all of the pending claims will be addressed.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 6, 13, 18-21, 24, 27, 31, 34, 40, 45-48, 50, 51, and 53-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Cornelius et al., U.S. Patent 5,338,295. Cornelius et al. discloses a catheter (10) comprising an elongated tubular member (12) having a proximal end, distal end, and a passageway defining a lumen (28) extending between the proximal and distal ends, said elongate tubular member comprising a braid (52) and an inner tubular liner (24) in coaxial relationship with the knit tubular member. Cornelius et al. discloses the braid, which is woven in a “clothing weave” (column2, lines 29-32). Webster’s Ninth New Collegiate Dictionary defines weave: to form by interlacing strands. Webster’s defines knit: to form by interlacing in a series of connected loops with needles. Therefore, a weaved braid is the same as

a knit. Cornelius et al. further discloses an outer cover (22); a braided tubular member formed from metal wire (col. 2, lines 29-30); a relatively stiff proximal segment and relatively flexible distal segment (col. 3, lines 51-53); a knit tubular member comprised of a metal alloy/stainless steel (col. 2, line 29) having a generally circular cross-sectional shape (col. 2, line 31); wherein at least one of the inner tubular liner and the outer tubular cover are radiopaque (36); a knit tubular member that is generally not radially expandable; an inner proximal liner (24) and an outer proximal cover (26); a braid interposed between the inner proximal liner and the outer proximal cover (fig. 2); a knit tubular member extending into the proximal segment (fig. 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 3763

6. Claims 3-5, 7-9, 14-15, 17, 22, 25-26, 32, 33, 35-37, 41, 42, 44, and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over Cornelius et al., in view of Samson, U.S. Patent 5,702,373. Cornelius teaches all of the limitations of the claims with the exception of a knit tubular member comprised of super elastic alloy, nickel-titanium alloy, nitinol, platinum alloy, non-metallic material, or polymeric material; wherein the wire has a diameter of about 0.3 mil-1.5 mil.; comprising a first strand made from a first material and a second made from a second material; an outer tubular cover comprised of a material selected from the group consisting of polyimide, polyamide, polyethylene, polypropylene, polyvinyl chloride, fluoropolymers including PTFE, FEP, Nylon, polyether block amide, vinylidene fluoride, and their mixtures, alloys, copolymers, and block copolymers; an inner tubular liner comprised of a material selected from the group consisting of polyethylene, flouropolymer, Nylon, polyether block amide, (PVC), ethyl vinyl acetate (EVA), polyethylene terphthalate (PET), and their mixtures, alloys, and copolymers; and a coil interposed between the inner proximal liner and the outer proximal cover. Samson discloses a knit tubular member comprising of super elastic alloy (col. 7, line 64), nickel-titanium alloy (col 8, lines 10-12), nitinol (col. 8, lines 10-12), platinum alloy (col. 12, lines 10-12); wherein the wire has a diameter of about 0.3 mil- 1.5 mil (col. 11, lines 60-62); comprising a first strand made from a first material and a second made from a second material; an outer tubular cover comprised of polyethylene (col. 10, line 36), polyvinyl chloride (col. 10, line 49); and an inner tubular liner comprised of polyethylene (col. 10, line 27), PVC (col. 10, line 27), EVA (col. 10, line 28), PET (col. 10, line 28); and a coil (282) interposed between the inner proximal liner and the outer proximal cover. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the device of

Cornelius with the materials and dimensions of Samson to help prevent such features as kinking of the catheter tube.

7. Claims 10-12, 28-30, and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornelius et al. in view of Samson ('373) as applied to claims 3-5, 7-9, 14-15, 17, 22, 25-27, 32-37, 41-42, and 44 above, and further in view of Samson et al., U.S. Patent 5,549,109. Cornelius et al. in view of Samson ('373) teaches all of the elements of Applicant's claims with the exception of a knit tubular member comprised of a multi-filament wire. Samson et al. ('109) discloses multi-filament tubes (302) that are woven (col. 9, lines 65-67). It would have been obvious to one having ordinary skill in the art to modify the modified catheter of Cornelius et al. and Samson ('373) to use a multi-filament wire as taught by Samson ('109) to improve kinking resistance. Samson discloses the use of stainless steel, platinum, and nitinol as the material for the muti-filament wire to improve kinking resistance.

Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

Any questions pertaining to informal matters such as the status of a case, missing portions of an Office Action, references, filing, paper matching, etc., should be directed to the Examiner's Legal Instruments Examiner (LIE), Rosalind Smith, at (703) 305-2440.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, AnhTuan Nguyen, can be reached on (703) 308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4520.

Michael M. Thompson
Patent Examiner



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MT 
May 7, 2001